

§ 30.2

the TARP recipient's receipt of any financial assistance and ending on the last date upon which any obligation arising from financial assistance remains outstanding (disregarding any warrants to purchase common stock of the TARP recipient that the Treasury may hold).

TARP recipient. (1) *General definition.* The term "TARP recipient" means

(i) Any entity that has received or holds a commitment to receive financial assistance; and

(ii) Any entity that would be treated as the same employer as an entity receiving financial assistance based on the rules in sections 414(b) and 414(c) of the Internal Revenue Code (26 U.S.C. 414(b) or (c)), but modified by substituting "50%" for "80%" in each place it appears in section 414(b) or 414(c) and the accompanying regulations. However, for purposes of applying the aggregation rules to determine the applicable employer, the rules for brother-sister controlled groups and combined groups are disregarded (including disregarding the rules in section 1563(a)(2) and (a)(3) of the Internal Revenue Code (26 U.S.C. 1563(a)(2) and (a)(3)) with respect to corporations and the parallel rules that are in 26 CFR 1.414(c)-2(c) with respect to other organizations conducting trades or businesses).

(2) *Certain excluded entities.* Neither any entity receiving funds under TARP pursuant to section 109 of EESA nor any Federal Reserve bank as that term is used in the Federal Reserve Act (12 U.S.C. 221 *et seq.*) will be treated as a TARP recipient subject to section 111 of EESA and any rules and regulations promulgated thereunder.

(3) *Anti-abuse rule.* Notwithstanding paragraph (1) of this definition, the term "TARP recipient" means any entity that has received, or holds a commitment to receive, financial assistance; and any entity related to such TARP recipient to the extent that the primary purpose for the creation or utilization of such entity is to avoid or evade any or all of the requirements of section 111 of EESA or these regulations.

Treasury. The term "Treasury" means the U.S. Department of the Treasury.

31 CFR Subtitle A (7-1-14 Edition)

Valid employment contract. The term "valid employment contract" means a written employment contract that is:

(1)(i) A material contract as determined pursuant to Item 601(b)(10)(iii)(A) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)(A)); or

(ii) A contract that would be deemed a material contract as determined pursuant to Item 601(b)(10)(iii) of Regulation S-K under the Federal securities laws (17 CFR 229.601(b)(10)(iii)), but for the fact that the material contract relates to one or more employee who is not an executive officer; and

(2) Is enforceable under the law of the applicable jurisdiction.

[74 FR 28405, June 15, 2009, as amended at 74 FR 63992, Dec. 7, 2009]

§ 30.2 Q-2: To what entities does this part apply?

This part applies to any TARP recipient, provided that the requirements of sections 111(b) (portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable, § 30.6 (Q-6), and § 30.8 (Q-8) through § 30.11 (Q-11), and § 30.15 (Q-15)), and section 111(e) (§ 30.13 (Q-13)) apply only during the period during which any obligation to the Federal government arising from financial assistance provided under the TARP remains outstanding. For a TARP recipient that has had an obligation to the Federal government arising from financial assistance provided under the TARP, and no further financial assistance under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable) and section 111(d) (§ 30.12 (Q-12)) apply through the last day of the period during which that obligation remains outstanding; for a TARP recipient that has never had an obligation to the Federal government arising from financial assistance provided under the TARP, the requirements of section 111(c) (including portions of § 30.4 (Q-4), § 30.5 (Q-5) and § 30.7 (Q-7), as applicable) and section 111(d) (§ 30.12 (Q-12)) apply through the last day of the TARP recipient's fiscal year including the sunset date. For this purpose, an obligation includes the ownership by

Office of the Secretary of the Treasury

§ 30.4

the Federal government of common stock of a TARP recipient.

[74 FR 28405, June 15, 2009, as amended at 74 FR 63992, Dec. 7, 2009]

§ 30.3 Q-3: How are the SEOs and most highly compensated employees identified for purposes of compliance with this part?

(a) *Identification.* The SEOs for a year are the “named executive officers” who are employees and are identified in the TARP recipient’s annual report on Form 10-K or annual meeting proxy statement for that year (reporting the SEOs’ compensation for the immediately preceding year). These employees are considered the SEOs throughout that entire year. For purposes of the standards in this part applicable to the most highly compensated employees, the determination of whether an employee is a most highly compensated employee in a current fiscal year looks back to the annual compensation for the last completed fiscal year without regard to whether the compensation is includible in the employee’s gross income for Federal income tax purposes.

(b) *Compliance.* Regardless of when during the current fiscal year the TARP recipient determines the SEOs or the most highly compensated employees, the TARP recipient must ensure that any of the SEOs or employees potentially subject to the requirements in this part for the current fiscal year complies with the requirements in this part as applicable.

§ 30.4 Q-4: What actions are necessary for a TARP recipient to comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA (evaluation of employee plans and potential to encourage excessive risk or manipulation of earnings)?

(a) *General rule.* To comply with the standards established under sections 111(b)(3)(A), 111(b)(3)(E), 111(b)(3)(F) and 111(c) of EESA, a TARP recipient must establish a compensation committee by the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, and maintain a compensation committee during the

remainder of the TARP period. If a compensation committee is already established before the later of the closing date or September 14, 2009, the TARP recipient must maintain its compensation committee. During the remainder of the TARP period after the later of ninety days after the closing date of the agreement between the TARP recipient and Treasury or September 14, 2009, the compensation committee must:

(1) Discuss, evaluate, and review at least every six months with the TARP recipient’s senior risk officers the SEO compensation plans to ensure that the SEO compensation plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient;

(2) Discuss, evaluate, and review with senior risk officers at least every six months employee compensation plans in light of the risks posed to the TARP recipient by such plans and how to limit such risks;

(3) Discuss, evaluate, and review at least every six months the employee compensation plans of the TARP recipient to ensure that these plans do not encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient’s employees;

(4) At least once per TARP recipient fiscal year, provide a narrative description of how the SEO compensation plans do not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the TARP recipient, including how these SEO compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, the risks posed by employee compensation plans and how these risks were limited, including how these employee compensation plans do not encourage behavior focused on short-term results rather than long-term value creation, and how the TARP recipient has ensured that the employee compensation plans do not encourage the manipulation of reported earnings of the TARP recipient to enhance the compensation of any of the TARP recipient’s employees; and

(5) Certify the completion of the reviews of the SEO compensation plans